

# House File 2398 - Introduced

HOUSE FILE \_\_\_\_\_  
BY LENSING

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the preneed sale of cemetery and funeral  
2 merchandise and funeral services.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5542YH 82  
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1 1 Section 1. Section 523A.102, subsection 27, Code  
1 2 Supplement 2007, is amended to read as follows:  
1 3 27. "Seller" or "preneed seller" means a person doing  
1 4 business within this state, including a person doing business  
1 5 within this state who sells insurance, who advertises, sells,  
1 6 promotes, or offers to furnish cemetery merchandise, funeral  
1 7 merchandise, funeral services, or a combination thereof when  
1 8 performance or delivery may be more than one hundred twenty  
1 9 days following the initial payment on the account whether the  
1 10 transaction is completed or offered in person, through the  
1 11 mail, over the telephone, by the internet, or through any  
1 12 other means of commerce. "Seller" or "preneed seller"  
1 13 includes any person performing any term of a purchase  
1 14 agreement executed within this state, and any person  
1 15 identified under a burial account as the provider of cemetery  
1 16 merchandise, funeral merchandise, funeral services, or a  
1 17 combination thereof. "Seller" or "preneed seller" does not  
1 18 include a person who has an ownership interest in a seller or  
1 19 preneed seller but who is not actively engaged in advertising,  
1 20 selling, promoting, or offering to furnish such cemetery  
1 21 merchandise, funeral merchandise, funeral services, or a  
1 22 combination thereof.

1 23 Sec. 2. Section 523A.201, subsections 2, 3, and 8, Code  
1 24 Supplement 2007, are amended to read as follows:  
1 25 2. If a seller agrees to furnish cemetery merchandise,  
1 26 funeral merchandise, funeral services, or a combination  
1 27 thereof and performance or delivery may be more than one  
1 28 hundred twenty days following the initial payment on the  
1 29 account, a minimum of eighty percent of all payments made  
1 30 under the purchase agreement shall be placed and remain in  
1 31 trust until the person for whose benefit the funds were paid  
1 32 dies. Beginning on January 1, 2009, the minimum amount of all  
1 33 payments made under a purchase agreement which shall be placed  
1 34 and remain in trust shall increase by two percent each year  
1 35 until by January 1, 2018, and every year thereafter, the total  
2 1 amount of all payments made under a purchase agreement shall  
2 2 be placed in and remain in trust as provided in this section.

2 3 3. If a purchase agreement for cemetery merchandise,  
2 4 funeral merchandise, funeral services, or a combination  
2 5 thereof provides that payments are to be made in installments,  
2 6 the seller shall deposit eighty percent of each payment in the  
2 7 trust fund until the full amount required to be placed in  
2 8 trust has been deposited. If the purchase agreement is  
2 9 financed with or sold to a financial institution, the purchase  
2 10 agreement shall be considered paid in full and the trust  
2 11 requirements shall be satisfied within fifteen days after the  
2 12 seller receives funds from the financial institution.  
2 13 Beginning on January 1, 2009, the minimum amount of each  
2 14 installment payment made under a purchase agreement which  
2 15 shall be placed and remain in trust shall increase by two  
2 16 percent each year until by January 1, 2018, and every year  
2 17 thereafter, the total amount of all installment payments made  
2 18 under a purchase agreement shall be placed in and remain in  
2 19 trust as provided in this section.

2 20 8. ~~Interest~~ All interest or income earned on amounts  
2 21 deposited in trust shall remain in trust ~~under the same terms~~

~~2 22 and conditions as payments made under the purchase agreement,  
2 23 except that a limited liability corporation that was formed in  
2 24 2002 for the purpose of purchasing a cemetery from a foreign  
2 25 entity reorganizing under bankruptcy and such corporation is  
2 26 comprised of six establishments all located within the same  
2 27 county may withdraw so much of the interest or income as  
2 28 represents the difference between the amount needed to adjust  
2 29 the trust funds for inflation as set by the commissioner based  
2 30 on the consumer price index and the interest or income earned  
2 31 during the preceding year not to exceed fifty percent of the  
2 32 total interest or income on a calendar-year basis. The early  
2 33 withdrawal of interest or income under this provision does not  
2 34 affect the purchaser's right to a credit of such interest or  
2 35 income in the event of a nonguaranteed price agreement,  
3 1 cancellation, or nonperformance by such limited liability  
3 2 corporation.~~

3 3 Sec. 3. Section 523A.405, subsection 8, Code Supplement  
3 4 2007, is amended to read as follows:

3 5 8. The amount of the surety bond shall equal eighty  
3 6 percent of the payments received pursuant to purchase  
3 7 agreements, or the applicable portion thereof, for cemetery  
3 8 merchandise, funeral merchandise, funeral services, or a  
3 9 combination thereof, and the amount needed to adjust the  
3 10 amount of the surety bond for inflation as set by the  
3 11 commissioner based on the consumer price index. The seller  
3 12 shall review the amount of the surety bond no less than  
3 13 annually and shall increase the bond as necessary to reflect  
3 14 additional payments. The amount needed to adjust for  
3 15 inflation shall be added annually to the surety bond during  
3 16 the first quarter of the ~~establishment's~~ seller's fiscal year.  
3 17 Beginning on January 1, 2009, the minimum amount of the surety  
3 18 bond shall increase by two percent each year until by January  
3 19 1, 2018, and every year thereafter, the amount of the surety  
3 20 bond shall equal the total amount of the payments received  
3 21 pursuant to purchase agreements, or the applicable portion  
3 22 thereof, for cemetery merchandise, funeral merchandise,  
3 23 funeral services, or a combination thereof, and the amount  
3 24 needed to adjust the amount of the surety bond for inflation  
3 25 as set by the commissioner based on the consumer price index.

3 26 Sec. 4. Section 523A.502, subsection 6, Code Supplement  
3 27 2007, is amended to read as follows:

3 28 6. A sales agent licensed pursuant to this section shall  
3 29 satisfactorily fulfill continuing education requirements for  
3 30 the license as prescribed by the commissioner by rule.  
3 31 However, this continuing education requirement is not  
3 32 applicable to a sales agent who is also a licensed insurance  
3 33 producer under chapter 522B or a licensed funeral director  
3 34 under chapter 156.

3 35 Sec. 5. Section 523A.601, subsection 6, paragraph a, Code  
4 1 Supplement 2007, is amended to read as follows:

4 2 a. A purchase agreement that is funded by a trust shall  
4 3 include a conspicuous statement in language substantially  
4 4 similar to the following language:  
4 5 "For your prearranged funeral agreement, we will deposit  
4 6 not less than eighty percent of your payments in trust at  
4 7 (name of financial institution), (street address), (city),  
4 8 (state) (zip code) within fifteen days following receipt of  
4 9 the funds. Beginning on January 1, 2009, the minimum amount  
4 10 of your payments that will be placed in trust will increase by  
4 11 two percent each year until by January 1, 2018, and every year  
4 12 thereafter, the total amount of all payments you make under  
4 13 your prearranged funeral agreement will be placed in trust  
4 14 within fifteen days following receipt of the funds. For your  
4 15 protection, you have the right to contact the financial  
4 16 institution directly to confirm that the deposit of these  
4 17 funds occurred as required by law. If you are unable to  
4 18 confirm the deposit of these funds in trust, you may contact  
4 19 the Iowa insurance division for assistance by calling the  
4 20 insurance division at (telephone number) or by mail at (street  
4 21 address), (city), Iowa (zip code)."

4 22 Sec. 6. NEW SECTION. 523A.810A ELECTRONIC FILING.

4 23 The commissioner shall, by rule, develop a system and  
4 24 procedures and a format for electronic filing of documents  
4 25 required to be filed with the commissioner under this chapter.

4 26 Sec. 7. Section 523A.811, subsection 1, paragraph c, Code  
4 27 Supplement 2007, is amended to read as follows:

4 28 c. The amount of funds currently held in trust for  
4 29 cemetery merchandise, funeral merchandise, and funeral  
4 30 services is less than ~~eighty percent of all payments made~~  
4 31 under the purchase agreements referred to in the amount  
4 32 required in section 523A.201, subsection 2 or 3, as

4 33 applicable.

4 34

EXPLANATION

4 35 This bill relates to the sale of cemetery and funeral  
5 1 merchandise and funeral services that are furnished more than  
5 2 120 days after the initial payment on the account.

5 3 Code section 523A.102 is amended to provide that the  
5 4 definition of "seller" or "preneed seller" does not include a  
5 5 person who has an ownership interest in such a seller or  
5 6 preneed seller but who is not actively engaged in furnishing  
5 7 cemetery and funeral merchandise and funeral services.

5 8 Code section 523A.201(2) is amended to provide that  
5 9 beginning on January 1, 2009, the minimum amount of payments  
5 10 made under a purchase agreement for such merchandise and  
5 11 services that is required to be held in trust increases by 2  
5 12 percent per year for 10 years until January 1, 2018, and  
5 13 thereafter the total amount of all payments made are required  
5 14 to be held in trust. Currently, only 80 percent of such  
5 15 payments are required to be held in trust. A similar  
5 16 requirement applies to installment payments made under a  
5 17 purchase agreement in Code section 523A.201(3).

5 18 Code section 523A.201(8) is amended to require that all  
5 19 interest or income on amounts deposited in trust by all  
5 20 entities shall remain in trust.

5 21 Code section 523A.405 is amended to provide that the  
5 22 minimum amount of a surety bond that is filed in lieu of a  
5 23 trust fund for payments received under a purchase agreement  
5 24 must also, beginning on January 1, 2009, increase by 2 percent  
5 25 per year until by January 1, 2018, and every year thereafter  
5 26 the amount of the bond must equal the total amount of payments  
5 27 received, or the applicable portion received for cemetery and  
5 28 funeral merchandise and funeral services, plus an amount  
5 29 needed to adjust the bond for inflation.

5 30 Code section 523A.502 is amended to provide that continuing  
5 31 education requirements for sales agents do not apply to a  
5 32 sales agent who is also a licensed insurance producer under  
5 33 Code chapter 522B or a licensed funeral director under Code  
5 34 chapter 156.

5 35 Code section 523A.601 is amended to require that the  
6 1 disclosure information given to purchasers of such merchandise  
6 2 and services inform them of the increased trust fund  
6 3 requirements.

6 4 New Code section 523A.810A requires the commissioner of  
6 5 insurance to develop, by rule, a system and procedures for  
6 6 electronic filing of documents under this Code chapter.

6 7 Code section 523A.811 is amended to provide that the  
6 8 commissioner of insurance must notify the attorney general of  
6 9 the potential need for establishment of a receivership for a  
6 10 seller who is not meeting the increased trust fund  
6 11 requirements.

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